not in lawful possession of the other trees but that is immaterial as far as the defendant in this action is concerned. This action is, therefore, clearly maintainable by the plaintiff against the defendant for trespass. As there seemed to be no dispute on the facts as to trespass and the damage caused by the defendant and there is also no dispute in the pleading or on the evidence as to quantum I would defer from disturbing the finding of the learned president on that question.

The appeal will, therefore, be dismissed with costs.

Appeal dismissed.

Solicitors: *Eugene Lye & Co.; Oorjitham & Lam.*

SNG HUNG MENG v. PUBLIC UTILITIES BOARD

[F.C. (Wee Chong Jin C.J. (Singapore), Tan Ah Tah F.J. and Buttrose J.) February, 23, 1966]

[Singapore — Federal Court Civil Appeal No. Y1 of 1966]

Practice and Procedure — Writ issued in name of foreign sovereign — Validity of — Constitution and Malaysia (Singapore Amendment) Act, 1965, ss. 6, 7 and 8 — Courts of Judicature Act, 1964, s. 7 — Republic of Singapore Independence Act, 1965 — Position of High Court of Singapore after break-up from Malaysia.

Constitutional law — Sovereign state — High Court — Issue of Writs of Summons — Writ issued in name of foreign sovereign — Error fundamental to proceedings.

The plaintiff-appellant herein, on November 17, 1965, issued a specially indorsed writ for $11,900 overtime pay against the defendants. The mandatory part of the writ was in the form "The Honourable Dato' Wee Chong Jin, P.M.N., Chief Justice of Singapore in the name and on behalf of His Majesty the Yang di-Pertuan Agong". Singapore had become independent on August 9, 1965. The defendants-respondents herein, applied for the writ to be set aside on the ground of irregularity and on the ground *inter alia* that the writ was issued in the name of the Yang di-Pertuan Agong and not in the name of the Yang di-Pertuan Negara, the Head of State in Singapore. In the court below Chua J. held that the writ of summons should have been issued in the name of the Yang di-Pertuan Negara, the Head of State of Singapore, and as the writ in this case was issued in the name of a foreign sovereign, it was null and void.

On appeal to the Federal Court it was contended that the learned trial judge was wrong and submitted that the writ was properly issued in the name of the Yang di-Pertuan Agong but if not, the mistake amounted to a mere irregularity curable by an amendment.

Held: (1) section 6 of the Constitution of Malaysia (Singapore Amendment) Act 1965 has completely divested all sovereignty, jurisdiction, power and authority, executive or otherwise vested in the Yang di-Pertuan Agong of Malaysia in respect of Singapore, i.e. the totality of all his powers, sovereign or otherwise in respect of Singapore and vested them in the Yang di-Pertuan Negara of Singapore;

(2) until the legislature of Singapore after August 9, 1965 specifically enacts that this particular power vests in someone other than the Yang di-Pertuan Negara of Singapore, all writs of summons issued out of the High Court of Singapore must be issued in the name of the Yang di-Pertuan Negara of Singapore; a writ of summons issued out of the High Court of Singapore in the name of a sovereign of a foreign country commanding the appearance of a person before the High Court of Singapore is a bad writ amounting to a nullity unless there is a clear enactment by the legislature of Singapore enabling a writ of summons to be so issued;

(3) therefore the writ of summons in the present case was not a mere irregularity but was a nullity. The issue of a writ in the name of a foreign sovereign is an error fundamental to the whole proceedings.

FEDERAL COURT.

Dennis Murphy for the appellant.

Graham S. Hill for the respondent.

In the court below *Howard Cashin* appeared for the plaintiff and *Tan Cheng Guan* appeared for the defendant. On December 10, 1965 the following judgment was delivered:

Chua J.: On the 17th November, 1965, the plaintiff in this case issued a specially indorsed writ claiming "for $11,911 being overtime pay payable by the defendants to the plaintiff for work done and services rendered by the plaintiff to the City Council of Singapore and to the defendants as an employee of the said City Council and as an employee of the defendants." Particulars of the overtime were also set out in the statement of claim endorsed on the writ.

The mandatory part of the writ is in this form. "The Honourable Dato' Wee Chong Jin, P.M.N., Chief Justice of Singapore, in the name and on behalf of His Majesty the Yang di-Pertuan Agong....."

A copy of this writ was served on the defendants and they entered conditional appearance on the 2nd December, 1965.

On the 2nd December, 1965, the defendants issued a summons applying for the writ to be set aside for irregularity on the grounds:

(1) that the said writ was issued in the name and on behalf of His Majesty the Yang di-Pertuan Agong instead of the name of His Excellency the Yang di-Pertuan Negara contrary to section 7 of the Courts of Judicature Act, 1964 and section 6 of the Constitution and Malaysia (Singapore Amendment) Act, 1965 and

(2) that the plaintiff's claim as pleaded therein is not such as may properly be the subject of a specially indorsed writ under Order III rule 5 of the Rules of the Supreme Court 1934."

Taking the second ground of the defendants first. It was submitted that the statement of claim endorsed on the writ did not disclose a cause of action which comes within Order III rule 5 of the Rules of the Supreme Court 1934. I am of the view that there is no substance in this submission. The statement of claim discloses that it was a claim on a contract of service and was for a liquidated sum and is therefore a subject of a specially indorsed writ under Order III rule 5.

I now come to the first ground.

By section 7(1) of the Courts of Judicature Act 1964 "All summonses.....shall be issued and shall be expressed to be issued by the Chief Justice of the High Court issuing the same in the name of the Yang di-Pertuan Agong and shall be signed by a Registrar of such court....."

It is also necessary to mention the Independence of Singapore Agreement, 1965, and the Constitution and Malaysia (Singapore Amendment) Act, 1965.

By an agreement dated the 7th August, 1965 (The Independence of Singapore Agreement, 1965) made between the Government of Malaysia and the Government of Singapore it was agreed that "Singapore shall cease to be a State of Malaysia on the 9th day of August, 1965, (hereinafter referred to as 'Singapore Day') and shall become an independent and sovereign state separate from and independent of Malaysia." Article IV of the agreement provided that "The Government of Malaysia will take such steps as may be appropriate and available to them to secure the enactment by the Parliament of Malaysia of an Act in the form set out in Annex B to this agreement and will ensure that it is made operative as from Singapore Day, providing for the relinquishment of sovereignty and jurisdiction of the Government of Malaysia in respect of Singapore so that the said sovereignty and jurisdiction shall on such relinquishment vest in the Government of Singapore in accordance with this agreement and the constitutional instruments annexed."

In accordance with the agreement of the 7th August, the Malaysian Parliament on the 9th August, 1965, enacted the Constitution and Malaysia (Singapore Amendment) Act, 1965, (hereinafter referred to as the Malaysia Act, 1965) whereby Singapore ceased to be a State of Malaysia on the 9th August, 1965 (Singapore Day) and became an independent and sovereign State and nation separate from and independent of Malaysia.

The relevant sections of the Malaysia Act, 1965, are sections 6, 7 and 8.

Section 6 provides:

"The Yang di-Pertuan Agong shall on Singapore Day cease to be the Supreme Head of Singapore and his sovereignty and jurisdiction, and power and authority, executive or otherwise in respect of Singapore shall be relinquished and shall vest in the Yang di-Pertuan Negara, the Head of State of Singapore."

Section 7 provides:

"All present laws in force in Singapore immediately before Singapore Day shall continue to have effect according to their tenor and shall be construed as if this act had not been passed in respect of Singapore subject however to amendment or repeal by the Legislature of Singapore.

Section 8 provides:

"Until other provision is made by the Legislature of Singapore, the jurisdiction, original or appellate, and the practice and procedure of the High Court and the subordinate courts of Singapore shall be the same as that exercised and followed immediately before Singapore Day, and appeals from the High Court shall continue to lie to the Federal Court of Appeal of Malaysia and then to the Privy Council in like manner."

When one looks at the writ of summons in this case one sees at once that it is a foreign sovereign who is commanding the defendants to enter appearance within 8 days if they wish to dispute the plaintiff's claim. Everyone knows that a foreign sovereign cannot issue a command here. The plaintiff however says that in law a Singapore writ can be issued in the name of the Yang di-Pertuan Agong.

Counsel for the plaintiff submits that by virtue of section 7 and section 8 of the Malaysia Act, 1965, the writ must be issued in accordance with section 7(1) of the Courts of Judicature Act and until the Legislature of Singapore makes other provisions the writ is issued in the name of the Yang di-Pertuan Agong. This argument it seems to me ignores the fact (1) that by section 6 of the Malaysia Act the Yang di-Pertuan Agong had on Singapore Day ceased to be the Supreme Head of Singapore and he has relinquished and transferred his sovereignty and jurisdiction and power and authority executive or otherwise in respect of Singapore to the Yang di-Pertuan Negara, the Head of State of Singapore; (2) that the High Court here has ceased to be a High Court of the Federation of Malaysia in Singapore and is now the High Court of the State of Singapore.

I am of the view that by virtue of section 6 of the Malaysia Act the writ of summons must be issued in the name of the Yang di-Pertuan Negara, the Head of State of Singapore.

The question then arises whether the writ of summons in this case is null and void or only irregular. It seems to me that it is much more than an irregularity. I think it is a nullity.

For these reasons I set aside the writ. The defendants' costs are to be taxed and paid by the plaintiff to the defendants.

The plaintiff appealed to the Federal Court. The following judgment was read in the Federal Court on February 23, 1966:

Wee Chong Jin C.J. (Singapore): This appeal raises a novel and unique point brought about by the sudden separation of Singapore from Malaysia on 9th August 1965.

On 17th November 1965 the plaintiff issued a specially endorsed writ claiming "$11,911 being overtime pay payable by the defendants to the plaintiff for work done and services rendered by the plaintiff to the City Council of Singapore and to the defendants as an employee of the said

City Council and as an employee of the defendants."

The mandatory part of the writ runs thus:

"The Honourable Dato' Wee Chong Jin, P.M.N. Chief Justice of Singapore, in the name and on behalf of His Majesty the Yang di-Pertuan Agong."

"His Majesty the Yang di-Pertuan Agong" was the constitutional title prior to 9th August 1965 and on 17th November 1965 of the constitutional sovereign ruler of Malaysia.

The writ was served on the defendants who entered a conditional appearance and at the same time took out a summons to set aside the writ for irregularity on the ground *inter alia* that "the said writ was issued in the name and on behalf of His Majesty the Yang di-Pertuan Agong instead of the name of His Excellency the Yang di-Pertuan Negara contrary to section 7 of the Courts of Judicature Act, 1964 and section 6 of the Constitution and Malaysia (Singapore Amendment) Act, 1965".

Chua J. before whom the summons was heard, held that the writ should have been issued in the name of the Yang di-Pertuan Negara which was on the 17th November 1965 the constitutional title of the constitutional Head of State of Singapore and set aside the writ as being not merely an irregularity but a nullity.

Counsel for the plaintiff contends before us that Chua J. was wrong and submits that the writ was properly issued in the name of the Yang di-Pertuan Agong but if not, the mistake amounted to a mere irregularity curable by an amendment.

It is common ground that immediately before 9th August 1965 all writs had to be issued in the name of the Yang di-Pertuan Agong of Malaysia as expressly provided by section 7(1) of the Courts of Judicature Act 1964 which became law on 16th March 1964. Section 7(1) provides:—

"All summonses, warrants, orders, rules, notices and mandatory processes whatsoever, whether civil or criminal, shall be issued and shall be expressed to be issued by the Chief Justice of the High Court issuing the same in the name of the Yang di-Pertuan Agong and shall be signed by a Registrar of such court; and every such summons, warrant, order, rule, notice and mandatory process shall be sealed with the seal of the court issuing or making the same."

It is common ground also that on its separation from Malaysia on 9th August 1965 Singapore became a sovereign and independent country with a Head of State known as the Yang di-Pertuan Negara.

It is also common ground that the separation of Singapore was effected by an agreement known as the Independence of Singapore Agreement 1965 and made between the Government of Malaysia and the Government of Singapore on 7th August 1965, Article IV of which provides for the enactment by the Parliament of Malaysia of an Act in the form set out in Annex B to the Agreement to be operative on 9th August 1965 whereby the Government of Malaysia would relinquish sovereignty and jurisdiction in respect of Singapore "so that the said sovereignty and jurisdiction shall on such relinquishment vest in the Government of Singapore in accordance with this Agreement and the constitutional instruments annexed".

It is also common ground that on 9th August 1965, the Parliament of Malaysia, in accordance with the Independence of Singapore Agreement 1965, enacted the Constitution and Malaysia (Singapore Amendment) Act 1965.

By section 6 of the Constitution and Malaysia (Singapore Amendment) Act 1965 the "sovereignty and jurisdiction, and power and authority, executive or otherwise" of the Yang di-Pertuan Agong of Malaysia was vested in the Yang di-Pertuan Negara, the Head of State of Singapore.

By section 7 all present laws in force in Singapore immediately before 9th August 1965 continued "to have effect according to their tenor and shall be construed as if this Act had not been passed in respect of Singapore subject however to amendment or repeal by the Legislature of Singapore."

By section 8 "until other provision is made by the Legislature of Singapore, the jurisdiction, original or appellate, and the practice and procedure of the High Court and the subordinate courts of Singapore shall be the same as that exercised and followed immediately before Singapore Day, and appeals from the High Court shall continue to lie to the Federal Court of of Appeal of Malaysia and then to the Privy Council in like manner."

Between 9th August 1965 and the day of the issue of the writ in question the Singapore Parliament passed no enactment affecting the Courts of Judicature Act 1964, but on 22nd December 1965 it enacted the Republic of Singapore Independence Act, 1965 with retrospective effect from 9th August 1965.

Section 3 of this Act in effect re-enacts section 6 of the Constitution and Malaysia (Singapore Amendment) Act 1965.

Section 11 of this Act provides for the jurisdiction, original or appellate, and the practice and procedure of the High Court and the subordinate courts of Singapore to be the same as that exercised and followed immediately before 9th August 1965 until other provision is made by the Legislature.

Section 13(1) provides as follows:

"Subject to the provisions of this section, all existing laws shall continue in force on and after Singapore Day,

but all such laws shall be construed as from Singapore Day with such modifications, adaptations, qualifications and exceptions as may be necessary to bring them into conformity with this Act and with the independent status of Singapore upon separation from Malaysia."

Section 13(2)(b) and (c) provide as follows:—

"(2) Without prejudice to the generality of subsection (1), in any existing law which continues in force after Singapore Day, unless the context otherwise requires —

(b) any reference to the Yang di-Pertuan Agong shall be construed as a reference to the President;

(c) any reference to the Yang di-Pertuan Negara shall be construed as a reference to the President.

Section 14 provides that "Nothing in this Act shall affect the validity of any acts done in the name of, or by, the Yang di-Pertuan Negara or the State Advocate-General before the enactment of this Act."

It is conceded that if on the true construction of all the above-mentioned provisions of the Independence of Singapore Act 1965, the word "President" should be substituted for the words "Yang di-Pertuan Agong" in section 7(1) of the Courts of Judicature Act 1964 then this appeal must fail.

Mr. Murphy for the plaintiff however contends that by virtue of the express provisions of section 11 of the Republic of Singapore Independence Act, 1965 the Legislature has expressly enacted that the practice and procedure of the High Court shall be the same as that followed immediately before 9th August 1965 and as the form of a writ of summons is purely a matter of practice and procedure, section 13(2)(b) is not applicable in the context of section 7(1) of the Courts of Judicature Act 1964.

While I find this argument attractive I must nevertheless reject it for the following reasons. In the first place, it is a fundamental rule when construing a statute that the statute must be looked at as a whole and looking at the Republic of Singapore Independence Act, 1965 as a whole it is in my opinion clear that the Legislature intended and so enacted that all the attributes that go with the status of a sovereign and independent country in so far as executive and legislative powers and the exercise thereof are concerned have from 9th August 1965 been divested from those exercising them before that day and on and from that day been vested in the Head of State, the Executive and the Legislature of Singapore.

Secondly, without attempting to trace it historically and merely being content to state it as being beyond question, the legal system pertaining in Singapore is derived from the British legal system and under such a system the process for the commencement of actions in the High Court is by a writ of summons in the name of the Head of State whereby the Head of State commands the appearance of the person or persons named therein to enter an appearance. In other words a writ of summons is a command from the constitutional Head of State in the exercise of his executive authority or power as such Head of State and it is only when that executive act has been exercised that the judicial power is exercisable by the courts.

Thirdly, it is provided by section 7(1) of the Courts of Judicature Act, 1964 that all summonses, warrants, orders, rules, notices and mandatory processes whatsoever, whether civil or criminal, shall be issued and shall be expressed to be issued by the Chief Justice of the High Court issuing the same in the name of the Yang di-Pertuan Agong. This provision is part of the substantive law and is not a mere matter of practice and procedure. For that reason it does not come within the ambit of section 11 of the Republic of Singapore Independence Act, 1965.

It becomes unnecessary therefore to consider whether Chua J. was right in the view he took that by virtue of section 6 of the Constitution and Malaysia (Singapore Amendment) Act 1965 the plaintiff's writ of summons must be issued in the name of the Yang di-Pertuan Negara of Singapore but had it been necessary to do so I would have been of the opinion that Chua J. came to the right conclusion.

In my opinion section 6 of the 1965 Act has completely divested all sovereignty, jurisdiction, power and authority, executive or otherwise vested in the Yang di-Pertuan Agong of Malaysia in respect of Singapore i.e. the totality of all his powers, sovereign or otherwise in respect of Singapore and vested them in the Yang di-Pertuan Negara of Singapore. One of such powers is the power to command the appearance of a subject or a person within his territory to appear before his courts. It follows in my opinion, that until the Legislature of Singapore after 9th August 1965 specifically enacts that this particular power vests in someone other than the Yang di-Pertuan Negara of Singapore, all writs of summons issued out of the High Court must be issued in the name of the Yang di-Pertuan Negara of Singapore. It seems to me that a writ of summons issued out of the High Court of Singapore in the name of a sovereign of a foreign country commanding the appearance of a person before the High Court of Singapore is a bad writ amounting to a nullity unless there is a clear enactment by the Legislature of Singapore enabling a writ of summons to be so issued.

It follows that in my opinion the writ of summons in the case before us is not a mere irregularity but is a nullity. The issue of a writ in the name of a foreign sovereign is an error fundamental to the whole proceedings and

for all these reasons I would dismiss the appeal with costs.

In the light of our decision in this appeal, it may not be out of place for me to express the hope that consideration may elsewhere be given as to the desirability of validating all writs, totalling several hundreds, so we have been informed from the Bar, issued in the name of the Yang di-Pertuan Agong between 9th August 1965 and the date when the Republic of Singapore Independence Act 1965 was published in the Government *Gazette*.

Tan Ah Tah F.J.: I agree.

Buttrose J.: I agree.

Appeal dismissed.

Solicitors: *Murphy & Dunbar; Rodyk & Davidson.*

LIM SU SANG v. TECK GUAN CONSTRUCTION & DEVELOPMENT CO. LTD.

[F.C. (Thomson L.P., Pike C.J. (Borneo) and Gill J.) February 24, 1966]

[Jesselton — Federal Court Civil Appeal No. 68 of 1965]

Arbitration — Agreement in writing containing arbitration clause — Arbitration clause containing blanks — Whether effective — Sabah Arbitration Ordinance, s. 6.

In this case the respondents had commenced proceedings to recover the balance due for work done and materials supplied under a building contract. The building contract was in a standard form and contained an arbitration clause, which had however, blanks where the name of the arbitrator should have been filled in. The appellants sought to have the proceedings set aside on the ground that what was involved was a dispute in connection with the agreement and was therefore subject to the arbitration clause in the agreement. At the trial McGilligan J. held that the action related to a dispute in connection with the agreement but that the arbitration clause was void for uncertainty and he dismissed the application. The appellants appealed.

Held: (1) it was clear from the arbitration clause that it was the intention of the parties that any dispute that might arise should be settled by arbitration and in such circumstances in the absence of an appointment of an arbitrator by the parties, section 6 of the Sabah Arbitration Ordinance clearly gave a right to either party to ask for an appointment by the court;

(2) the action in this case related to a dispute in connection with the agreement to which the arbitration clause applied and therefore the proceedings should be stayed.

Cases referred to:—

(1) *Willesford* v. *Watson L.R.* 8 Ch.D. 473, 480.

(2) *Hillas & Co.* v. *Arcos Ltd.* 147 L.T. 503.

(3) *Davies Middleton and Davies Ltd.* v. *Cardiff Corporation.* The Times 16th January, 1964.

(4) *London and North Western Railway* v. *Billington* [1889] A.C. 79.

FEDERAL COURT.

V. Kumar for the appellant.

J. Treleaven for the respondent.

Cur. Adv. Vult.

Thomson L.P.: This appeal arises from proceedings between Teck Guan Construction and Development Company Limited (whom I shall call "the contractor") and one Lim Su Sang, trading as Sabah Housing Society (whom I shall call "the employer").

On 30th December, 1961, the parties entered into an agreement in writing under which the contractor undertook to build a number of houses for the employer on a housing estate at Tuaran Road, Jesselton, which the employer was engaged in developing. That agreement, which was based on a standard form prepared by the Royal Institute of British Architects, was long and detailed and contained an arbitration clause the material portions of which are as follows:—

"Provided always that in case any dispute or difference shall arise between the employer or the architect on his behalf and the contractor, either during the progress or after the completion or abandonment of the works, as to the construction of this contract or as to any matter or thing of whatsoever nature arising thereunder or in connection therewith.....then either party shall forthwith give to the other notice in writing of such dispute or difference, and such dispute or difference shall be and is hereby referred to the arbitration and final decision of

[*Space left blank*]

or, in the event of his death or unwillingness or inability to act, of a person to be appointed on the request of either party by the

[*Space left blank*]

and the award of such arbitrator shall be final and binding on the parties."

On 26th May, 1965, the contractor issued a writ against the employer which was specially endorsed as follows:—

"*STATEMENT OF CLAIM*

The plaintiff's claim is for the balance of account for work done and materials provided by the plaintiff for the defendant at his request at Tuaran Gardens Housing Estate, Jesselton.

Particulars

1965 April 30 Revised contract sum	$423,839.80
Extra works	40,308.00
	$464,147.80
Less payments on account	$407,834.00
	$ 56,313.80"

The employer entered an appearance and then without taking any further step applied to have the proceedings stayed on the ground that what was involved was a dispute in connection with the agreement of 30th December, 1961, and was therefore subject to the arbitration clause in that agreement.